



David Romine
<DRomine@langsamstevens.
com>

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04-CV-080

Request To Testify
2/11DC

To Rules_Comments@ao.uscourts.gov

cc

bcc

Subject request to testify

Sir/Madam:

Please accept this e-mail as a request to testify regarding the proposed changes to the Federal Rules of Civil Procedure on February 11, 2005, in Washington DC. Thank you for your consideration.

- David Romine

David E. Romine, Esq.
Langsam Stevens + Silver LLP
1616 Walnut St., Suite 1700
Philadelphia, PA 19103
Phone 215 732 3255
Fax 215 732 3260

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David Romine
<DRomine@langsamstevens.
com>

01/28/2005 05:12 PM

To Rules_Comments@ao.uscourts.gov
cc
bcc
Subject Written Statement

04-CV-080
Testimony 2/11 DC

Dear Sir/Madam:

Secretary Peter G. McCabe, Esq. asked me to provide my written statement to the Committee by today in light of my request to testify on February 11, 2005. I was not able to complete my written statement by today so I enclose the attached. I plan to supplement the attached, and respectfully request permission to submit the supplement to the Committee next week.

I am mailing you a hard copy of the attached today.

Thank you for your courtesies.



- David Romine Rules Comment Summary.pdf

Some of the proposed amendments to the Federal Rules of Civil Procedure regarding electronic discovery are constructive and welcome. The requirement of early identification of and conference regarding potential problems with electronic discovery will likely lead to better management of cases. In addition, the clarification of rules regarding inadvertent disclosure of privileged materials will lead to better predictability, more free exchange of discovery, and ultimately less expense.

Some of the proposed changes are unnecessary. In particular,

- **Permitting a party to withhold electronically stored information that the party identifies as not reasonably accessible will encourage hiding discoverable and relevant information. The current Rule allowing for objecting to discovery on the ground that "the burden or expense of the proposed discovery outweighs its likely benefit" is sufficient protection.**
- **There is no reason to create a distinction between "electronically stored information" and "documents." Courts and parties have been treating electronically stored information as documents with no problem.**
- **Creating a safe harbor for failure to produce relevant, discoverable information would create the wrong incentives. The failure to respond to legitimate discovery requests is a more serious systemic problem than the cost of responding to requests for discovery that call for electronically stored information.**

David Romine